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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|------------------------|---|
| Proceeding | 91219179 |
| Party | Plaintiff Spliethoff's Bevrachtungskantoor B.V. |
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| Signature | /J. Michael Pennekamp/ |
| Date | 08/23/2016 |
| Attachments | M Leave File Spliethoff Motion for Summary Judgment.pdf(24583 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Opposition No. 91219179

Serial No. 86031633

SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V.,

Opposer,

v.

UNITED YACHT TRANSPORT LLC.,

Applicant.

**OPPOSER'S MOTION FOR LEAVE TO FILE MOTION FOR SUMMARY JUDGMENT
ON OPPOSITION GROUNDS UNRELATED TO APPLICANT'S PROPOSED
DEPOSITION ON WRITTEN QUESTIONS OF FOREIGN NON-PARTY GOEDEE**

Opposer SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V. ("Spliethoff"), by and through its undersigned counsel, hereby moves for leave to file its Motion for Summary Judgment on its "second" fraud claim that Applicant defrauded the USPTO regarding Applicant's use of the Mark in commerce, its non-use/void *ab initio* claim and its proposed "unlawful use" claim.¹ In support of this Motion, Spliethoff respectfully states as follows:

Spliethoff's Motion for Summary Judgment is based upon opposition grounds that are wholly unrelated to Applicant's noticed discovery under the Hague Convention of foreign non-parties Andre Goedee or Dockwise, Ltd. ("Goedee" and "Dockwise").

¹ On June 7, 2016, Spliethoff filed an opposed Motion for Leave to File Second Amended Notice of Opposition (DE 26) and supporting Declaration. (DE 27). The purpose of the proposed amended pleading is to add the opposition ground of "unlawful use." The foregoing motion has been fully briefed. (DE 26, 32 and 36).

The June 16, 2016 Suspension Order (DE 32) was premised upon Trademark Rule 2.214(d)(2) and Applicant's notice regarding the deposition on written questions of Goedee filed on June 15, 2016. (DE 30 and 31). The Order was silent as to whether the parties were permitted to make any filings with regard to any other issues in the case. On July 14, 2016, Spliethoff filed an opposed motion seeking reconsideration or clarification of the Suspension Order, which the parties have briefed. (DE 37, 43 and 44).

There is no overlap between the subjects of Applicant's noticed international discovery of Goedee or Dockwise, and the three opposition claims presented in Spliethoff's separately-filed Motion for Summary Judgment. As discussed in DE 37 and DE 44 (Spliethoff's filings seeking reconsideration or clarification of the scope of the Suspension Order), Applicant's international discovery is relevant only to Applicant's "abandonment" defense and (per Applicant) to Spliethoff's "first" fraud claim.² Therefore, it is unnecessary and would be prejudicial to Spliethoff for this proceeding to be halted in its entirety until the completion of such discovery.

Spliethoff's Motion for Summary Judgment sets forth three independent grounds upon which the Board properly may refuse registration of the subject Applicant. As such, Spliethoff asks the Board to allow these claims to be briefed and further asks the Board to consider and rule upon Spliethoff's summary judgment motion regarding these claims without waiting for the completion of Applicant's international discovery under the Hague Convention on unrelated topics.

² Spliethoff's "first" fraud claim asserts that Applicant filed and continued to prosecute its Application with knowledge of Dockwise's prior rights in the Mark and Spliethoff's "second" fraud claim asserts that Applicant made false representations to the USPTO regarding Applicant's use of the Mark in commerce. *See* March 1, 2016 Order at 1 – 2 (DE 22).

For the foregoing reasons, and those discussed in Spliethoff's Motion for Reconsideration/Clarification of the June 16, 2016 Suspension Order, Spliethoff respectfully requests leave to file its Motion for Summary Judgment, supporting Declaration and exhibits thereto and that these documents be accepted as filed.

Respectfully submitted,

/s/ J. Michael Pennekamp

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposer's Motion for Leave to File Motion for Summary Judgment on Opposition Grounds Unrelated to Applicant's Proposed Deposition on Written Questions of Foreign Non-Party Goedee has been e-filed via ESTTA and served upon Bryan D. Hull, Esquire, counsel for Applicant United Yacht Transport, LLC, by email to bhull@bushross.com, this 23rd day of August, 2016.

/s/ Sandra I. Tart

Sandra I. Tart